

MARON MARVEL BRADLEY & ANDERSON LLC

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Attorneys for Defendant,
Owens-Illinois, Inc.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM E. CARPER

: CIVIL ACTION

:

Plaintiff,

:

v.

: DOCKET NO. 12-CV-6164

:

OWENS-ILLINOIS, INC., et al.,

:

Defendants.

: ASBESTOS CASE

:

REPLY OF DEFENDANT OWENS-ILLINOIS, INC.
TO PLAINTIFF'S ANSWER TO MOTION FOR SUMMARY JUDGMENT

Plaintiff's Answer to Owens-Illinois, Inc.'s (hereinafter "Owens-Illinois") Motion for Summary Judgment argues that:

- 1) maritime law should apply in this case;
- 2) under maritime case law, "if there is actual or real exposure substantiality is for a jury";
- 3) here there is evidence that Kaylo was used on every ship as new construction Kaylo; and
- 4) since Carper was exposed to brand new Kaylo Owens-Illinois is liable. (See

Plaintiff's Answer to Motion for Summary Judgment of Owens-Illinois, p.3).

As discussed below, plaintiff's conclusion regarding Owens-Illinois' liability is not supported by the facts in this case and is based merely on supposition and conjecture, which is insufficient to defeat defendant's summary judgment motion.

Assuming that maritime law applies to this case, as plaintiff suggests, plaintiff must show for each defendant that 1) he was exposed to the defendant's product; 2) the product was a substantial factor in causing the injury suffered (lung cancer in this case); and 3) the defendant manufactured or distributed the asbestos-containing product to which exposure is alleged. Payne v. A.W. Chesterton, et al., 2013 WL 1880797, p.3 (E.D.Pa) (citations omitted). Here, the alleged exposure relevant to defendant's Motion for Summary Judgment occurred during Mr. Carper's assignment in the U.S. Navy aboard the USS Chilton from August 1954 to August 1955, where he served as an assistant engineer officer and damage control officer, as noted in plaintiff's Answer, p.2. As an assistant engineer, Mr. Carper stood a four hour watch daily in the boiler/engine room, where his duties were to observe boiler operations and the "shaft alley". (N.T., William Carper, 2/10/10, p.30:14-31:7; the relevant portions of Mr. Carper's deposition transcript are attached hereto as Exhibit A). Mr. Carper acknowledged that he never personally worked on any equipment in the boiler or engine room on the Chilton. (Id., P.31:14-17).

While aboard the USS Chilton, Mr. Carper testified that he was exposed to asbestos from gaskets that were used during the replacement of some pumps in the engine room. (Id., p.31:18-32:4). Plaintiff noted that he was also exposed to asbestos during a "minor" repair at the Norfolk Shipyard when four of the steam lines running in a passageway outside his sleeping quarters were torn out, replaced and reinsulated. Mr. Carper stated that his process lasted one

week and created a considerable amount of very fine white powdery dust. (Id., p.42:15-43:11; 45:20-24). Mr. Carper did not identify the manufacturer of the old or the new pipe insulation products. Plaintiff talked about working around people doing “very minor” maintenance on boilers patching cracks or damage in the boiler cover, but he did not observe anyone removing or altering, in any way, any insulation material on the boiler. (Id., p.46:1-17). Further, he did not believe that he was exposed to asbestos from any work done on the boiler in his vicinity. (Id., p.46:18-20). Clearly, Mr. Carper’s testimony is insufficient to establish any exposure to asbestos from a product that was manufactured, sold or supplied by defendant Owens-Illinois.

In an attempt to establish exposure against defendant, plaintiff cites “Navy Records from the National Archives” and deposition testimony from a Norfolk Shipyard worker, David Durham. The Navy Records, which are attached as Exhibit D to plaintiff’s Answer, reference that the Number One boiler was opened or dismantled for inspection at some point between December 9-20, 1954; one hundred fifty-three feet (153’) of pipe was renewed with CRS and nine (9) valves were removed in the flushing system (item 27C); insulation was replaced as necessary on the 40LM clipping room C-0101- M (item 35c); insulation was renewed on overhead of laundry (item 56c); and insulation was installed in day provisions storeroom (item 102c). There is no evidence that any asbestos containing product from Owens-Illinois was used to conduct any of these alleged repairs and, more significantly, that Mr. Carper was present and breathed in any asbestos dust that was possibly generated by any such repairs. In fact, plaintiff denied any asbestos exposure from boiler work in his vicinity, as noted above, and he never discussed asbestos exposure in or around the flushing system, 40LM

clipping room, the laundry room or the day provision storeroom. These references to ship repairs on board the USS Chilton are patently irrelevant as to any asbestos exposure by Mr. Carper from an Owens-Illinois product.

Similarly irrelevant and, arguably, inadmissible, is the testimony of David Durham cited by plaintiff. Mr. Durham's testimony was taken on November 15, 1985 in the United States District Court for the Northern District of Texas on behalf of multiple plaintiffs, none of whom were William Carper. Even assuming Owens-Illinois was actively involved in any of the Texas cases and represented by counsel at Mr. Durham's deposition, Owens-Illinois counsel would not have had any interest or even a sufficient basis to ask Mr. Durham about potential exposures to asbestos by an assistant engineer officer and damage control officer on board the USS Chilton from 1954 to 1955, particularly given the lengthy list of ships that Mr. Durham allegedly work on during his career at the Norfolk Navy Shipyard.

Plaintiff represents that Mr. Durham testified that "Kaylo was used generally on all the ships repaired at the Norfolk Navy Yard (Exhibit E) particularly in the 1950's (Exhibit E, N.T. 38-39)". (See plaintiff's Answer, p.2-3). Mr. Durham actually testified that Kaylo sections and block have been used from around 1950 until he left the shipyard [in 1975]. (N.T., David Durham, 11/15/85, p.38:24-39:5; the relevant pages of Mr. Durham's deposition transcript are attached hereto as Exhibit B). Mr. Durham did not say that Kaylo was generally used aboard all ships and he specifically did not testify that Owens-Illinois Kaylo was used aboard the USS Chilton in any area of the ship where Mr. Carper was present and actually exposed to asbestos from the alleged use of defendant's product. Mr. Durham did not even "generally" place any Owens-Illinois asbestos-containing

product aboard the Chilton. Further, and noticeably absent from plaintiff's Answer, is any reference to a list of "Some of the Insulation used at Norfolk Navy Shipyard" made up by Mr. Durham the day before he testified on November 15, 1985. (*Id.*, p.36:24-37:6). The list, which is attached hereto as part of Exhibit B, notes various manufacturers of pipe covering, pipe sections and block material and, by Mr. Durham's own admission, only represents "some of the materials ... not all of them, but ... some of them" used at the Norfolk Naval Shipyard. (*Id.*, p.37:3-6). Mr. Durham's testimony fails to satisfy the product identification / causation requirements for an asbestos claim under maritime law recognized by this Court in its Payne, *supra.*, opinion.

Plaintiff's Answer is misleading, disingenuous and woefully insufficient to overcome defendant's Motion for Summary Judgment. At best, plaintiff's evidence places Owens-Illinois products somewhere at the Norfolk Naval Shipyard for some time periods beginning around 1950. Plaintiff's evidence clearly fails to place the use of any Owens-Illinois product on board the USS Chilton in any area of the ship where Mr. Carper was assigned. Plaintiff has failed to meet its summary judgment burden and all claims, including cross-claims, should be dismissed as to Owens-Illinois in the Carper case.

By: /s/ Eric J. Kadish
Eric J. Kadish
Maron Marvel Bradley
& Anderson LLC
Attorneys for Defendant,
Owens-Illinois, Inc.

Dated: September 26, 2013

CERTIFICATE OF SERVICE

The undersigned certify that a true and correct copy of the within Reply of Defendant to Plaintiff's Answer to Motion for Summary Judgment has been filed electronically. This document is available for viewing and downloading from the ECF system and was served upon all counsel of record.

By: /s/ Eric J. Kadish
Eric J. Kadish
Maron Marvel Bradley
& Anderson LLC
Attorneys for Defendant,
Owens-Illinois, Inc.

Date: September 26, 2013

EXHIBIT A

1 IN THE COURT OF COMMON PLEAS
2 OF PHILADELPHIA COUNTY, PENNSYLVANIA
3
4

5 WILLIAM E. CARPER,
6 Plaintiff,

7 vs.

NOVEMBER TERM, 2009
No. 5257

9 A.O. SMITH CORP, ET AL.,

10 Defendants.

11

12 DEPONENT: William E. Carper

13
14 DATE: February 10, 2010
15 PLACE: Marriott Westshore
16 1001 N. Westshore Blvd.
17 Tampa, Florida

18 TAKEN: Pursuant to Notice

19
20 TIME: Began: 9:10 a.m.
 Ended: 11:20 a.m.

21
22 REPORTED BY: PHILIP RYAN, RPR
 Notary Public
 State of Florida at Large

23 VERITEXT NATIONAL COURT REPORTING COMPANY
 MID-ATLANTIC REGION
24 1801 MARKET STREET-SUITE 1800
 PHILADELPHIA, PENNSYLVANIA 19103

1 A. Excuse me?
 2 Q. Did you have any education post high
 3 school, after you left high school?
 4 A. Oh, yes.
 5 Q. Any college?
 6 A. Yes. Marshall University in
 7 Huntington, West Virginia.
 8 Q. And did you graduate?
 9 A. Yes.
 10 Q. What year did you graduate?
 11 A. 1954.
 12 Q. What was your degree?
 13 A. Bachelor of Science.
 14 Q. I want to talk about your work
 15 history. I'm going to try and do it
 16 chronologically.
 17 A. Okay.
 18 Q. During the time you were in either
 19 junior high or high school, did you have any
 20 part-time or summer jobs?
 21 A. Yes.
 22 Q. And what was the first job you had?
 23 A. Newspaper boy.
 24 Q. Okay. I assume -- well, let me -- is
 25 there anything about working as a newspaper boy

1 A. Yes.
 2 Q. During college, did you have any
 3 part-time or summer jobs?
 4 A. Yes.
 5 Q. And can you tell me the first one you
 6 had?
 7 A. Operating a developing laboratory for
 8 our photographic firm, primarily developing
 9 photographic negatives.
 10 Q. Anything about that job that you
 11 believe exposed you to asbestos?
 12 A. No.
 13 Q. Any other jobs during college?
 14 A. No.
 15 Q. You graduated in, I assume, May or
 16 June of 1954?
 17 A. Yes.
 18 Q. What did you do after you graduated
 19 college?
 20 A. I was a commissioned ensign in the
 21 United States Navy and went aboard the USS
 22 Chilton APA 38 in the Navy.
 23 Q. When you joined the Navy, did you have
 24 any kind of -- did you undergo any kind of
 25 training prior to being assigned to the Chilton?

1 that you believe exposed you to asbestos?
 2 A. No.
 3 Q. What was the next job you had?
 4 A. In the press room at the Charleston
 5 Gazette newspaper.
 6 Q. And what did you do in the press room
 7 there?
 8 A. Assembled newspapers as they came off
 9 the line.
 10 Q. Anything about that job that you
 11 believe exposed you to asbestos?
 12 A. No.
 13 Q. Is that a no?
 14 A. That's a no.
 15 Q. Okay.
 16 A. I thought I said it loud enough. I'm
 17 sorry.
 18 Q. That's all right. After the press
 19 room job -- are we still in high school? These
 20 are high school years we're talking about?
 21 A. That's high school, yes.
 22 Q. Any other jobs during high school?
 23 A. No.
 24 Q. Did you work -- did you go straight
 25 from high school to college?

1 A. No, but shortly thereafter I went to
 2 the Philadelphia Naval shipyard and attended
 3 naval damage control school and atomic,
 4 biological, and chemical warfare and defense
 5 school.
 6 Q. Okay. When you were assigned as an
 7 ensign to the Chilton, do you recall when you
 8 boarded the Chilton?
 9 A. August of 1958 -- or '54, I beg your
 10 pardon -- when I got out of college.
 11 Q. Okay. Do you recall when you left the
 12 Chilton?
 13 A. August of 1955.
 14 Q. During that year on the Chilton, can
 15 you tell me -- well, when you first boarded the
 16 Chilton, what were your duties?
 17 A. I was assistant engineering officer
 18 and damage control officer.
 19 Q. And can you tell me what that -- what
 20 that entailed?
 21 A. Yes, supervision of the engine room
 22 operations, boiler room, and also ensuring that
 23 the watertight integrity of the ship was
 24 maintained and that all emergency gear was in
 25 place and operative, such as battle lanterns.

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1 Q. So did you work in -- did you say the
2 boiler room?
3 A. Yes.
4 Q. And the engine room?
5 A. Yes.
6 Q. How many boiler rooms did the Chilton
7 have?
8 A. One.
9 Q. How many engine rooms?
10 A. One.
11 Q. Okay. Did your duties ever change
12 during the course of that year on the Chilton?
13 A. No.
14 Q. Can you estimate for me how much of
15 your time was spent in the boiler room?
16 A. I did a four-hour watch once a day.
17 Q. And how about the engine room?
18 A. Well, essentially they were the same
19 spaces.
20 Q. Okay.
21 A. So when you did a four-hour watch, you
22 were in both the boiler room and the engine room
23 both at the same time. It was an old class
24 ship.
25 Q. And what was -- what did you do during

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1 they had to cut new gaskets for those flanges,
2 and that insulation was asbestos. I can't
3 positively tell you whether I was exposed at
4 that point, but it was there and I was there.
5 Q. Okay. You said -- I'm sorry. You
6 said that sometime during the year the ship was
7 in for repairs?
8 A. Yes, minor repairs.
9 Q. Do you recall when during the year
10 that was?
11 A. Early part of 1955.
12 Q. Do you recall generally when the
13 Chilton was built, do you know?
14 A. No, I do not.
15 Q. Do you know the maintenance history of
16 any of the equipment on-board the Chilton?
17 A. Well, it was constantly being
18 maintained. The reason for the amount of
19 repairs the ship underwent was because of leaky
20 steam pipes that had to be replaced. So it was
21 a constant process. It was not something that
22 -- when it got so serious, then the ship went in
23 the yard for minor repairs.
24 Q. I guess my question -- I asked it
25 wrong -- was: Do you know when any of the

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1 your four-hour watch?
2 A. Observed the operations of the firing
3 of the boilers and maintenance of the
4 temperatures of the boilers, observing the shaft
5 alley and making sure the shaft wasn't bouncing
6 around in the shaft alley too much, placing too
7 much strain on it, those types of things.
8 Q. Did you personally ever work on any of
9 the equipment in the --
10 A. No.
11 Q. You just have to let me finish.
12 A. I'm sorry.
13 Q. That's all right. No problem.
14 Did you ever personally work on any of the
15 equipment in the boiler or engine rooms on the
16 Chilton?
17 A. No.
18 Q. During the time you worked in the
19 boiler and engine rooms of the Chilton, do you
20 know if you were ever exposed to any
21 asbestos-containing products?
22 A. At one point when the ship was
23 undergoing minor repair, some of the pumps in
24 the engine room were replaced. And in that
25 process the flanges of the pipes were broken and

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1 equipment on-board the Chilton was installed?
2 A. No.
3 Q. Okay. These pumps that were being
4 worked on in early 1955, who was working on
5 them?
6 A. Combination of the ship's crew and the
7 contractor personnel from the shipyard.
8 Q. And what were you doing?
9 A. Observing.
10 Q. Okay. When you were observing, how
11 close or far away would you be?
12 A. 10 feet.
13 Q. Do you know how many pumps were worked
14 on during this repair process?
15 A. Best of my recollection, two.
16 Q. Do you know the types of the pumps
17 that were there?
18 A. Buffalo water pumps.
19 MR. PRESENT: Buffalo.
20 BY MR. BRADLEY:
21 Q. You said they were water pumps;
22 correct, sir?
23 A. Water pumps, yes.
24 Q. Can you describe them for me in any
25 other way?

1 this the only -- are these two pumps the only
 2 two times you observed this work being done on a
 3 Buffalo pump?

4 A. Yes.

5 Q. Okay. Did you ever -- during your
 6 years on the Chilton, did you ever see any
 7 manuals for a Buffalo pump?

8 A. No.

9 Q. Do you know if on-board ship there
 10 were any manuals for a Buffalo pump?

11 A. No.

12 Q. No, you don't know or no, there were
 13 not?

14 A. I do not know.

15 Q. Okay. Other than that pump work that
 16 we've discussed, do you believe you were exposed
 17 to asbestos in any other way aboard the Chilton
 18 over the course of that year?

19 A. Yes.

20 Q. And what were the -- how so?

21 A. During the minor repair while we were
 22 in the yard at Norfolk, they also tore out and
 23 replaced some steam lines. Those steam lines
 24 were insulated with asbestos. Four of those
 25 steam lines went right down the passageway

1 A. Yes.

2 Q. Do you know the manufacturer of the
 3 insulation that was -- that was on the steam
 4 lines before it got replaced?

5 A. No.

6 Q. Does the name Johns Manville sound
 7 familiar?

8 A. It sounds familiar to me, but I cannot
 9 positively say that that was it because I did
 10 not see that name on the material.

11 MR. BRADLEY: Can we go off the record
 12 for just a second?

13 MR. PRESENT: Okay. Let's -- you want
 14 to take a short break?

15 MR. BRADLEY: Yeah.

16 (Brief recess.)

17 BY MR. BRADLEY:

18 Q. Mr. Carper, before we took a break, we
 19 were talking about the removal, the tear-out of
 20 old steam line insulation and the reinstallation
 21 of new insulation, and I believe you said that
 22 the name Johns Manville was familiar to you?

23 A. That -- no, I don't relate Johns
 24 Manville to that process at all.

25 Q. How about the name Pittsburgh Corning?

1 outside my state room. And when they tore out
 2 the asbestos, there was quite a bit of residue
 3 created in the passageway.

4 And also when they reinstalled new pipes and
 5 new insulation, they used preformed asbestos
 6 pipe insulation and they sawed and cut that to
 7 make it fit the pipes and the joints and the
 8 flanges and so on. In so doing, they created a
 9 considerable amount of very fine white powdery
 10 dust that was all over the passageway as well as
 11 our state rooms. And the state room had no door
 12 on it, only a drape for the entryway. So it
 13 was -- it was pretty prominent throughout the
 14 area.

15 Q. So this work -- at least some of that
 16 work was being done right out where you slept.

17 A. Yes. The crew stayed aboard the ship
 18 during the renovation.

19 Q. There was a considerable amount of
 20 length of steam lines on-board the Chilton; is
 21 that correct?

22 A. Yes.

23 Q. And all of it was insulated --

24 A. Yes.

25 Q. -- with asbestos?

1 A. That is familiar to me, but I can't
 2 positively say that that was a material being
 3 used.

4 Q. Okay. And lastly, how about the name
 5 Unibestos?

6 A. No.

7 Q. You said that the tear-out in the --
 8 the tear-out and the cutting of the new, the
 9 block insulation created a considerable amount
 10 of dust?

11 A. Yes.

12 Q. I've heard it described as kind of a
 13 snowstorm of dust. Is that --

14 A. Yes. And it left a very fine, white,
 15 powdery residue all over the passageway and all
 16 over our state room.

17 Q. Okay. So even where you slept, there
 18 was dust from the pipe insulation?

19 A. Yes.

20 Q. Okay. How long did that process take
 21 where they were tearing out and reinstalling?
 22 Was it during -- over the course of a whole year
 23 or was it a specific amount of time?

24 A. It was approximately one week.

25 Q. Okay. Now I think during -- when you

1 first were telling me about your duties as
 2 assistant engineering officer and assistant
 3 damage control officer, I am not sure, did you
 4 work around workers working on boilers?

5 A. Yes.

6 Q. What type of work were the people
 7 doing on boilers?

8 A. Very minor maintenance. If there was
 9 a crack or a damaged place, they would repair
 10 the covering of the insulating material, but
 11 nothing major.

12 Q. Okay. Did they have to remove
 13 insulating material off the boiler?

14 A. No.

15 Q. Did they have to alter the insulation
 16 material on the boiler in any way?

17 A. No.

18 Q. Do you believe that any of the work
 19 that was done on the boiler in your vicinity
 20 exposed you to asbestos?

21 A. No.

22 Q. Do you know the manufacturer of any of
 23 those boilers?

24 A. No.

25 Q. All right. Do you know the name

1 A. Yes.
 2 Q. And how long were you at the fleet
 3 training in Norfolk, Virginia?

4 A. One year.

5 Q. And what were your duties there?

6 A. Assembling training courses for newly
 7 commissioned ships that were being commissioned
 8 in Newport News Naval Shipyard.

9 Q. Where did you -- where did you do your
 10 work? Was it classroom work, office work, were
 11 you aboard ships?

12 A. Both classroom and office,
 13 occasionally on-board some of the ships that
 14 were being commissioned.

15 Q. Do you remember any of the ships?

16 A. USS Forrestal.

17 Q. Any others?

18 A. Yes, there was one sticking in my
 19 mind, but I can't remember it.

20 Q. Okay, fair enough.

21 A. I'll think of it in a minute.

22 Q. This one year you spent at fleet
 23 training in Norfolk, was that your job the
 24 entire time or did it change?

25 A. No, that was the job the entire time.

1 Combustion Engineering?

2 A. No.

3 Q. We've talked about the repair work
 4 done on those two boilers, and we've talked
 5 about the tearing out of the insulation and the
 6 reinstallation on steam lines while you were
 7 aboard the USS Chilton; correct?

8 A. Yes.

9 Q. During that year aboard the Chilton,
 10 are there any other ways in which you believe
 11 you were exposed to asbestos?

12 A. No.

13 Q. Okay.

14 MR. PRESENT: Can you excuse me one
 15 second?

16 BY MR. BRADLEY:

17 Q. Okay, Sir, I believe you said you
 18 left the USS Chilton in 19-- August of 1955?

19 A. Yes.

20 Q. Where did you go next in terms of
 21 work?

22 A. Fleet training center in Norfolk,
 23 Virginia.

24 Q. At this point, were you still in the
 25 Navy?

1 Q. Okay. Was there anything about that
 2 one year at fleet training that you believe
 3 exposed you to asbestos?

4 A. No.

5 Q. Okay. Does that take us up to about
 6 August of '56?

7 A. Yes.

8 Q. Where did you go next?

9 A. Naval ordnance plant in south
 10 Charleston, West Virginia.

11 Q. Still in the Navy?

12 A. Yes.

13 Q. When you went, how long were you
 14 there?

15 A. Two years.

16 Q. And what did you do while you were at
 17 Navy ordnance?

18 A. Safety officer and personnel
 19 management officer.

20 Q. And day-to-day, what kind of job
 21 duties did that position entail?

22 A. Well, most of it was office work but
 23 we did make periodic tours through the plant to
 24 observe operational conditions to make sure they
 25 were being conducted in accordance with standard

EXHIBIT B

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CIVIL ACTION NOS.

GEORGE R. ODER and MARTHA H. ODER;) CA3-84-1436-H
JAMES FRIEND and ELLA E. FRIEND;) CA3-84-1447-H
DAVID L. LUSTER and PHYLLIS LUSTER;) CA3-84-1449-H
VINCENT W. MASON, SR., WORTHY W. MASON;) CA3-84-1448-H
CHARLES OWENS, JR. and MARY C. OWENS;) CA3-84-1437-H
JOSH PHILLIPS, DOROTHY M. PHILLIPS;) CA3-84-1441-H
VIRGINIA EPPS, personal representative) CA3-84-1667-H
Estate of JAMES R. EPPS, Deceased;)
MAURICE LANE, SR. and JANIE L. LANE;) CA3-84-1683-H
HENRY N. ROPER, JR. and MARGARET ROPER;) CA3-84-1679-H
KENNETH SMITH and SHIRLEY SMITH;) CA3-84-2251-H
ROY V. THOMAS and BERNICE THOMAS;) CA3-84-0142-H
ROBERT G. LEWIS and ELSIE W. LEWIS;) CA3-85-0238-H
FRANCES H. LITTLE, Administratrix) CA3-85-0513-H
Estate of FREDDIE W. LITTLE, Deceased;)
AMBROSE LASSITER, CYNTHIA L. LASSITER;) CA3-85-1647-H
JAMES E. ALEXANDER, WANDA L. ALEXANDER;) CA3-85-1643-H
GODWIN M. DUNNING and MARY J. DUNNING;) CA3-85-1584-H
CHARLIE JOHNSON and LILLIE MAE JOHNSON;) CA3-84-2064-H
WILLIAM H. BASNIGHT, JOYCE G. BASNIGHT;) CA3-84-2067-H
WILSON COLUMBUS GODFREY and IDA PRICE;) CA3-85-1890-H
GEORGE L. SPINDLER, THELMA R. SPINDLER;) CA3-84-2066-H
MELVIN L. LILES, R., ROSEMARY H. LILES;) CA3-85-1889-H

Plaintiffs,)

v.)
H. K. PORTER COMPANY, INC., et al.)

Defendants.)

DEPOSITION UPON ORAL EXAMINATION
OF DAVID C. DURHAM
TAKEN ON BEHALF OF THE PLAINTIFFS

Norfolk, Virginia

November 15, 1985

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CIVIL ACTION NOS.

4	RAYMOND L. JONES and ESSIE M. JONES;	)	CA3-84-1451-F
	RALPH J. LOYD and JENNIE C. LOYD;	)	CA3-84-1438-F
5	HERBERT W. HICKS and JESSIE M. HICKS;	)	CA3-84-1444-F
	HOWARD B. SHAW and RUBY M. SHAW;	)	CA3-84-1687-F
6	JIMMY WADDLES, Personal Representative,	)	CA3-84-1678-F
	Estate of LLOYD G. WADDLES, Deceased;)	
7	ERNEST EDWARD ANDREWS, NANCY ANDREWS;	)	CA3-84-2065-F
	CARL N. STANLEY, MARGARET E. STANLEY;	)	CA3-84-2253-F
8	EDGAR W. WIGGINS;	)	CA3-85-0319-F
	ALICE O. EWELL, Personal Representative	)	CA3-85-0421-F
	Estate of RANDOLPH T. EWELL;)	
9	DORTHY LUCAS and JAMES LUCAS;	)	CA3-85-0442-F
	WILLIE T. COLLINS and BERTHA COLLINS;	)	CA3-85-0509-F
10	RICHARD L. BURNET, SR., DELLA BURNET;	)	CA3-85-0642-F
	ROY BURCHER and JUNE BURCHER;	)	CA3-85-0742-F
11	ANDREW THOMAS and VERLENE D. THOMAS;	)	CA3-85-0944-F
	WILLIAM E. EVANS, JR., PATRICIA EVANS;	)	CA3-85-0943-F
12	PAUL WALLACE, SR. and JOYCE C. WALLACE;	)	CA3-85-1548-F
	JOSEPH DISHMAN and ELLEN R. DISHMAN;	)	CA3-85-1555-F
13	WILLIAM H. MERRILL, III and)	
	FRANCES S. MERRILL;	)	CA3-85-1774-F
14	AUVID V. DODD;	)	CA3-85-0523-F
	IRENE L. EDWARDS, Administratrix for	)	CA3-84-2274-F
15	IRA E. LLOYD;)	
	GRADY T. RIGGS and BETTIE L. RIGGS;	)	CA3-85-0237-F
16	WILLIAM A. GOLDEN;	)	CA3-85-1866-F
	EDWARD S. ADAMS and SHIRLEY J. ADAMS;	)	CA3-85-1867-F
17)	
	Plaintiffs,)	
18)	
	v.)	
19)	
	H. K. PORTER COMPANY, INC., et al.)	
20)	
	Defendants.)	

DEPOSITION UPON ORAL EXAMINATION
OF DAVID C. DURHAM,
TAKEN ON BEHALF OF THE PLAINTIFFS

Norfolk, Virginia
November 15, 1985

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CIVIL ACTION NOS.

4	ERSKINE C. HARVEY, LOUENIA H. HARVEY;)	CA3-84-1334-D
	BRUCE CLARK and DELORES W. CLARK;)	CA3-84-1446-D
5	ROY L. BELL and VIRGINIA BELL;)	CA3-84-1452-D
	LLOYD G. WILLIAMSON;)	CA3-84-1439-D
6	PALFUS C. BATTEN, SR., NANNIE BATTEN;)	CA3-84-1434-D
	ALMA GERALDINE BURTON, Personally and)	CA3-84-1445-D
7	Administratrix of the Estate of)	
	FREDDIE BURTON, Deceased;)	
8	JOHN VESELOSKY and CONNIE L. VESELOSKY;)	CA3-85-0089-D
	THOMAS ROBINSON and ANNIE D. ROBINSON;)	CA3-84-1685-D
9	JERRY STRADER;)	CA3-84-1681-D
	JOHN R. MAXWELL;)	CA3-84-2252-D
10	WILLIAM THOMPSON and BARBARA THOMPSON;)	CA3-85-1645-D
	JAMES WILLIAMSON and MARY WILLIAMSON;)	CA3-85-1646-D
11	ANNA D. BROWN, Administrator, Estate)	CA3-85-1337-D
	of WILLIS H. BROWN, JR., Deceased;)	
12	MAISIE L. DEAL, Executrix of the ^)	CA3-85-0511-D
	Estate of MELVIN E. DEAL, SR.,)	
13	MELVIN T. FREEMAN, SR., SARAH FREEMAN;)	CA3-84-1666-D
	ELMER W. JENNINGS;)	CA3-85-0514-D
14	CHARLES L. RUSSELL;)	CA3-84-2068-D
	HOMER J. WOODS and MILDRED WOODS;)	CA3-84-2063-D
15	HAROLD DEHART HUBBARD;)	CA3-85-2052-D
	MICHAEL A. EARDLEY, JOHANNA K. EARDLEY;)	CA3-85-2103-D
16	Plaintiffs,)	
)	
17	v.)	
)	
18	H. K. PORTER COMPANY, INC., et al.)	

Defendants.

DEPOSITION UPON ORAL EXAMINATION
OF DAVID C. DURHAM,
TAKEN ON BEHALF OF THE PLAINTIFFS

Norfolk, Virginia

November 15, 1985

1 Appearances:

2 GLASSER and GLASSER
3 By: RICHARD S. GLASSER, ESQUIRE
RONALD F. SCHMIDT, ESQUIRE
H. SEWARD LAWLER, ESQUIRE
Counsel for the Plaintiffs

5 DEHAY & BLANCHARD
6 By: CRAIG D. NYHUS, ESQUIRE
Counsel for the Wellington Group
Defendants

7 VIAL, HAMILTON, KOCH & KNOX
8 By: WILLIAM R. KEFFER, ESQUIRE
Counsel for Defendant Raymark
9 Industries, Inc.

10 KAUFMAN & CANOLES, P.C.
11 By: ALBERT H. POOLE, ESQUIRE
Counsel for Defendant GAF Corporation

12 DUANE & SHANNON
13 By: JAMES C. SHANNON, ESQUIRE
Counsel for Defendant Garlock
14 Corporation

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10 DAVID C. DURHAM was sworn and deposed on
11 behalf of the Plaintiffs, as follows:

EXAMINATTON

13 . BY MR. SCHMIDT:

14 Q. Could you state your name and address for
15 the record, please?

16 A. David C. Durham.

18 Q. And during what period of time were you
19 employed at the Norfolk Naval Shipyard?

20 A. From 1942 until 1975.

21 Q. And what was your position or positions
22 there during that time?

23 A. I first went in as a pipe coverer trainee,
24 and then in 1942 I made mechanic, pipe coverer and
25 mechanic, and worked as a mechanic until around 1964, and

David C. Durham

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1 then was instructor from then on until I left the
2 shipyard.

3 Q. Where did you perform your work at Norfolk
4 Naval Shipyard?

5 A. Well, I performed it all over the shipyard,
6 but most of my work went aboard ships until the last few
7 years, while instructor I was aboard ship and in the shop,
8 instructing shop.

9 Q. Was there a time when you were an
10 instructor that you ceased working on board ships as much
11 as you had previously as an instructor?

12 A. Well, the last I would, say from '72 or '3,
13 I did less work aboard ship than I did the last couple of
14 years. I did less work aboard ship than I did before.

15 Q. Prior to that time, how much of your work
16 was aboard ships?

17 A. Well, prior to that time, most of my work
18 was aboard ship. I mean, the majority of it. And I
19 would have -- while I was instructor, I would have maybe
20 one or two days a week that I put in just for instruction
21 only.

22 The rest of the time aboard ship.

23 Q. And where aboard ships would you work?

24 A. All over.

25 Q. And have you prepared a list of the ships

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1 that you worked aboard at Norfolk Naval Shipyard?

2 A. Yes.

3 MR. SCHMIDT: And if I could have this
4 marked, please, as Durham exhibit 2. And we can go ahead
5 and mark Durham 1 at the same time, if we haven't already.

6 (Copy of three notices to
7 take deposition were marked Moore
8 Deposition Exhibit No. 1.)

9 (A list of ships was marked
10 Moore Deposition Exhibit No. 2.)

11 BY MR. SCHMIDT:

12 Q. I show you what has been marked as Durham 2
13 and ask you if you can identify it, please?

14 A. This is my handwriting. This is a ship
15 list that I made out, and this is just a few of the ships
16 I worked on. In other words, it would take a long time
17 to put down all of the ships that I worked aboard. This
18 is a few of them that I worked.

19 Q. Approximately how many ships are on your
20 list there?

21 A. Well, I would say there is probably 175.
22 I'm not sure. I haven't counted them. But that's just a
23 few of the ships that I worked aboard.

24 Q. Do you remember approximately when you made
25 up this list?

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1 on the weight of the cloth and so forth. And in the last
2 few years, most of it came 60 inches wide. But some of
3 it used to be 72 inches wide.

4 And so we would rip it, rip it off and tear
5 the selvage edge off, and so forth, and to put it on the
6 pipes, and that created a lot of dust. When you would
7 rip it, the dust went up in the air.

8 Q. Amosite -- did the customary use of Amosite
9 aboard ships during the time you were at Norfolk Naval
10 Shipyard create dust?

11 A. Yes.

12 Q. And what kinds of activities would create
13 that dust?

14 A. Well, that would be the same as the others.
15 When you're removing it, or replacing it, either one,
16 Amosite would create a lot of dust, and most -- you know,
17 everybody would be sneezing and coughing around it, and
18 stuff like that working around it.

19 Q. During the course of your employment at
20 Norfolk Naval Shipyard, did you come to be familiar with
21 various trade names and manufacturers of the different
22 types of products that you have mentioned?

23 A. Yes.

24 Q. And how did you become to be familiar with
25 those trade names and manufacturers?

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1 A. Well, I was always observant of different
2 type materials, and so forth, and so I looked at the
3 names of some of them, and then after I became instructor,
4 well, then it was my job to recognize the different types
5 of material and to explain it to the new people coming in,
6 the different type material, so they would use the right
7 material for the particular job.

8 In other words, you're supposed to use a
9 material that's specified for a particular job. You're
10 supposed to meet the specs to use it, so that's the way I
11 became to know the different types of insulation.

12 Q. And did you create a list of the various
13 trade names and manufacturers' names that you observed on
14 the packaging of these various types of asbestos
15 materials over the years?

16 A. Yes.

17 MR. SCHMIDT: Would you mark this as 8,
18 please.

19 (A list entitled "Some of
20 the insulation used at Norfolk Naval
21 Shipyard," was marked Durham
22 Deposition Exhibit No. 8.)

23 BY MR. SCHMIDT:

24 Q. I show you a document marked as Exhibit No.
25 8 and ask you if you can identify it?

David C. Durham

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1 A. Yes. This is a list I made up -- I made up
2 yesterday.

3 Q. And is that the list of the various
4 materials used at Norfolk Naval Shipyard?

5 A. Yes. This is some of the materials. It's
6 not all of them, but it's some of them.

7 Q. And I take it the information on here,
8 trade names and manufacturers, you obtained this from the
9 packaging?

10 A. Yes.

11 Q. On your list you have Owens-Corning, Kaylo
12 sections and blocks.

13 Over what period of time were Owens-Corning,
14 Kaylo sections and blocks customarily used aboard ships
15 at Norfolk Naval Shipyard?

16 A. Well, I don't particularly remember
17 Owens-Corning when I first went in there, but after I
18 came back out of the service, in '46, somewhere around in
19 1950, I think, Owens-Corning -- the best I recall,
20 Owens-Corning Kaylo somewhere in the late '40s or early
21 '50s.

22 Q. Do you remember Kaylo before the name
23 Owens-Corning?

24 A. Well, Kaylo, I don't -- in other words, we
25 used to call the material by the name it was, and then

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1 Owens-Corning, the name like that. In other words,
2 that's names that I applied after I became an instructor,
3 you know, I had to look up the names of the different
4 manufacturers from the different thing. But we called
5 the sections by their name, you know. In other words,
6 like Kaylo or Thermobestos, or Unibestos.

7 We didn't go by the manufacturer's name to
8 start off with them.

11 Q. Did you see the name Owens-Corning?

12 A. Yes. Well, I saw the name Owens-Corning.

13 The first I recall is somewhere, you know, after the -- I
14 don't recall that name when I first started working at
15 Norfolk Naval Shipyard.

16 Q. And do you remember that name from the
17 packages of the Kaylo?

18 A. Yes. The names. From the Kaylo on the
19 boxes itself.

20 In other words, all the different companies
21 had their names on the box, but they would have the name
22 like Unibestos, it would be Unibestos, but it would be by
23 Pittsburgh-Corning, or either UNARCO.

24 Q. Over what period of time do you remember --
25 over what period of time were Kaylo sections and blocks

David C. Durham

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1 customarily used aboard ships at Norfolk Naval Shipyard?

2 A. Well, they have been used from, like I say,
3 since I would say somewhere around the '50s, 1950, or
4 somewhere along about that, on up until I left the
5 shipyard.

6 Q. You also have listed on here, Pabco, Prasco,
7 Caltemp, insulating cements, Fibreboard Corporation.

8 Over what period of time were Pabco, Prasco,
9 Caltemp as insulating cements by Fibreboard, customarily
10 used aboard ships at Norfolk Naval Shipyard?

11 A. Well, we was using them when I left there,
12 and we was using them from in the early -- that Caltemp
13 and all was used way back then. In other words, that is
14 one of the early materials.

15 Q. How about the Pabco and the Prasco?

16 A. Well, Pabco -- Pabco was used in the '50s,
17 and '60s, but they -- we used that right on up until I
18 left the shipyard.

19 Q. Pabco, Prasco, Caltemp. What are they?

20 A. Well, that's insulation sections and block.

21 In other words, you have both.

22 Q. And then next you have GAF Calcilite pipe
23 covering, asbestos millboard, insulating cement. Over
24 what period of time -- over what period of time was
25 Calcilite pipe covering customarily used aboard ships at

Some of the insulation used at
Norfolk Naval Shipyard

Owens Corning - Kings section & Block
Fiber Board Corp - Panels, press, Caltemp, ^{insulating} cement.
G.A.F. - Calcite pipe covering, asbestos millboard
 insulating cement.
Keene Corp - Paper House cement, Thermocel pipe covering
Eagle Pitcher Corp. - Eagle 66 cement, on the cement
H.K. Porter - Southern Asbestos - Asbestos, Asbestos
 Cloth, Heavy & Light, asbestos sewing thread.
Armstrong Cork Company - L.T. pipe covering,
 asbestos tiles, Brine putty, Roofing Cement
Belotech Corporation - Philip Carey Manufacturing Co.
H. Temp Section & Block, Temp-Check section & Block,
 Carey temp section & Block, Insulating cements,
 Fibrous adhesive, asbestos millboard, asbestos paper
 aircell section & Block, 85% mag. cement & Block.
Raybestos - Manhattan Inc. - Glassbestos cloth,
 Glassbestos tape, Heavy & light cloth (asbestos),
 asbestos sewing thread, revettable cloth, asbestos gaskets
Pittsburgh Corning Corporation - asbestos section
 Boardglass & bedding compound;
Waco Industries Inc. asbestos section &
 Block, borite felt, light & heavy and
 metallic asbestos cloth, insulating cement & gasket
Johns Manville Corp - 85% Magnesia section & Block and
 cement, Thermocel section & Block, insulating cements,
 asbestos fire felt, fibrous adhesive, Super X section & Block
Gulick, Inc., asbestos gaskets
Dixie Mather - asbestos gaskets.
Nicet Industries - asbestos gasket, asbestos millboard.

